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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,852	09/27/2000	John J Horton	BS00-150	6537

7590 06/22/2005

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EXAMINER

STRANGE, AARON N

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 06/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/669,852

Applicant(s)

HORTON, JOHN J

Examiner

Aaron Strange

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 26-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24 and 26-32 is/are allowed.
- 6) ☐ Claim(s) 1-23 and 33-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

PD

DETAILED ACTION

Response to Arguments

1. Applicant's amendment to claim 24 and Applicant's arguments, see Page 11, Line 17 to Page 12, Line 14 of Remarks, filed 3/31/2005, with respect to Claim 24 and its' respective dependents have been fully considered and are persuasive. The rejection of claims 24 and 26-32 has been withdrawn.
2. Applicant's arguments with respect to claims 1-23 and 33-45, filed 3/31/2005 have been fully considered but they are not persuasive.
3. With regard to claims, 1, 15, 33, and 39, and Applicant's assertion that Thurlow "prompts only while the primary connection remains active, and it is therefore inherent in the prompting of Thurlow that the user is choosing to affirmatively terminate the active primary connection in favor of establishing an active secondary connection" (Page 10, Line 28 to Page 11, Line 1 of Remarks), the Examiner respectfully disagrees. Thurlow teaches prompting a user when switching between two network connections. The prompt occurs in response to an automatic attempt to activate the second connection by the computer. Thurlow further discloses that this automatic attempt to connect via the second connection may occur in response to a detection that the first connection has failed (Col 16, Lines 22-44).

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4. In response to Applicant's argument that Hibbard teaches away from the proposed combination since Hibbard "does not allow for a user to intervene via a prompt to prevent the dial-up connection from being established", the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Hibbard contains no disclosure suggesting that a prompt would not be allowed, and Applicant's reasoning that since the failover is automatic, prompting would not be allowed is unpersuasive. Thurlow discloses an automatic failover mechanism, which may be optionally interrupted by a prompt at request of the user (Col 13, Lines 19-36), providing further evidence that such a modification is not only possible, but known in the art at the time the invention was made.

Claim Objections

5. Applicant's amendments to the claims appear to overcome all of the objections made in the Office action of 12/28/2004, and they are hereby withdrawn.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The rejections of claims 1-23 and 33-45, presented in the Office action of 12/28/2004 are **MAINTAINED**, since those claims have not been amended and Applicant's arguments are not persuasive (discussed above).

Allowable Subject Matter

8. Claims 24 and 26-32 are allowed.

9. The following is a statement of reasons for the indication of allowable subject matter:

10. With regard to claim 24 and 24-32, the prior art of record fails to disclose all of the limitations of independent claim 24. Notably, the prior art of record describes a method of establishing a backup connection via a dial-up modem when it is determined that a primary connection has failed (Hibbard, US 2001/0056503 A1; Thurlow et al., US 6,457,879 B1) and notifying a system administrator when the backup connection is established (Hibbard). However, the prior art of record does not disclose a system as claimed, and as enabled by the specification, where the service provider monitors the connection via dial-up modem, determines the user's account information including whether the user is an xDSL service subscriber or customer, and based on detecting

the connection to the server via dial-up modem and determining that the user is an xDSL subscriber or customer, the service provider concludes that xDSL service has failed and issues a trouble ticket requesting repair of the xDSL service.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

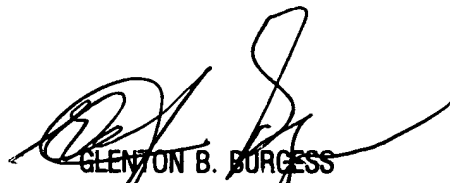
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Strange whose telephone number is 571-272-3959. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AS
6/15/2005


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